HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

LPA No.: 90 of 2007
Reserved on: 10.12.2007
Decided on: 27.12.2007.

The Dehra Friends Cooperative Society Pvt. Ltd. .....Appellant.

Versus

Jagdish Parkash Karol and others .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the appellant:	Mr.Bhuvnesh Sharma, Advocate.
For respondent No.1:	Mr.K.D. Sood, Advocate.
For respondents No.2 to 5:	Mr.M.S. Chandel, Advocate General, with Mr.R.M. Bisht, Deputy Advocate General.

Per V.K. Ahuja, J:

This is an LPA filed by the appellant/Society against the judgment passed by the learned Single Judge on 28.5.2007, vide which the writ petition filed by respondent No.1 was allowed and it was held that the appellant/Society had no jurisdiction to refuse the membership to the petitioner and he was entitled to be a member of the appellant/Society.

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[1]Whether reporters of Local papers may be allowed to see the judgment? Yes.

Briefly stated the facts of the case are that the petitioner is a resident of Village Bonn, Tehsil Dehra, District Kangra, H.P. The appellant, respondent No.5 before the learned Single Judge, was a Cooperative Society formed in the year 1967. The petitioner alleged that he had experience in the transport business and he applied for the membership of the Society on 2.9.1993. His application was rejected by respondent No.5 on 18.9.1993. An appeal was preferred before the Registrar, Cooperative Societies and the Assistant Registrar, Cooperative Societies allowed the appeal on 28.12.1993 and directed respondent No.5 to admit the petitioner as a member of the Society. The petitioner sent various representations in between 28.12.1993 to 26.4.1996 to implement the said order but it was not implemented. The Additional Registrar, Cooperative Societies took suo motu proceedings against the order, dated 28.12.1993 and passed an order on 9.9.1996 allowing the revision and remanded the case to the Assistant Registrar, Cooperative Societies for decision afresh after hearing both the parties.

The Society, vide its resolution, dated 30.6.1991, amended the bye-laws by restricting the membership to the persons already enrolled as members. The petitioner received a communication, dated 3.2.1996, alongwith order of the Assistant Registrar, Cooperative Societies that his objections have been accepted and it was held that he was entitled to be enrolled as a member of respondent No.5 Cooperative Society. Respondent No.5 filed an appeal before Secretary, Cooperative Societies, which was dismissed on 29.3.1997. Another appeal was filed by respondent No.5 for review of order, dated 29.3.1997. The petitioner filed objections to the review and the Additional Registrar, Cooperative Societies dismissed the appeal on 28.10.1998. Respondent No.5 again applied to the

Secretary, Cooperative Societies for review of the order, dated 28.10.1998 and the Under Secretary, Cooperative Societies, vide order dated 16.2.2001, allowed the appeal of respondent No.5 and modified the order, dated 28.10.1998. The petitioner has challenged these orders, which were against him, being illegal and contrary to the provisions of the Act and the Rules framed thereunder. He also challenged that the Society had no power to pass resolutions amending bye-law No.7 restricting the membership of the Society. A writ petition was filed by the petitioner challenging the order of respondent No.5, vide which he was not enrolled as a member and the various orders passed against him. The said writ petition was allowed by the learned Single Judge, who held that the Society has no jurisdiction to refuse membership of the Society and the petitioner was entitled to be the member of the Society.

Being aggrieved, the present appeal has been filed by the appellant/Society.

We have heard the learned counsel for the parties and have gone through the record of the case.

The learned Single Judge has made a reference to the procedure for the amendment of the bye-laws of a Cooperative Society at page 4 of its judgment, in detail. It is clear that the proposed amendment of any of the bye-laws has to be sent to the Registrar, Cooperative Societies, who has to see that the proposed amendment is not contrary to the provisions of the Act and the Rules and it is only when the Registrar registers an amendment, he shall forward to the Society a copy of the registered amendment alongwith his certificate that the amendment has been duly registered. In case the Registrar refuses to register

an amendment of the bye-laws of a Cooperative Society, he shall communicate the order of refusal together with the reasons thereof to the Society.

Thus, it is clear from this provision that though the power is vested in the general house of the Cooperative Society to propose any amendment, but that cannot be carried out until and unless it is so approved by the Registrar and then only it can be given effect to. A reference has been made to three resolutions passed by the Cooperative Society, dated 30.6.1991, 20.10.1994 and 11.6.1995. The learned Single Judge has only referred to resolution, dated 30.6.1991, in detail, which shows that the resolution was passed to the effect that only the existing members can transfer their share to other members and in future no new member will be entertained/admitted from any area of operation, which was Dehra Sub Division and Tehsil Amb.

It is clear from the findings of the learned Single Judge that these amendments were examined by the Assistant Registrar, Cooperative Societies and these resolutions were not found to be in conformity with the provisions of the Act and it was observed that these were against the provisions of Section 11 of the Act. These amendments were again submitted but were again rejected by the Department.

The learned Single Judge had clearly observed that the Society/respondent No.5 again restricted its membership merely on the basis of the resolutions passed by it which are against the spirit of H.P. Cooperative Societies Act and Rules framed thereunder. Thus, these resolutions had to be ignored since these were not binding as having not been approved by the Registrar, Cooperative Societies. However, there is no mention in the judgment that Clauses iv & v of Bye-law No.5, were not applicable to the petitioner or he

could still be a member ignoring this Bye-law No.5. Clauses iv & v of Bye-law No.5 read as under:

> "Bye Law No.5 subject to the provisions of Bye-law 6, any individual shall be liable for admission as a member of the society if he is:
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> (i) XXXXX XXXXX XXXXX
> (ii) XXXXX XXXXX XXXXX
> (iii) XXXXX XXXXX XXXXX
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> "(iv) A worker in a transport concern or carrying on the vocation of Motor driver, conductor, cleaner, agent, mechanic, fitter or employed by the society in operating the transport business or running the workshops; and
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> (v) Any other person connected with transport business provided that the number of such persons shall not at any time exceeds 20% of the total membership of the society."

It is, therefore, clear that once these Bye-laws have not been struck down as violative of the Constitution or not binding to be a member, the petitioner had to satisfy either of these two conditions. There is nothing in the said judgment that the petitioner satisfied either of these two conditions and as such was entitled to be a member of the Society and until and unless he satisfied either of these two conditions, which still remain in force in the form of Bye-law, he cannot become a member of the Society. Therefore, the only direction which could be given by the learned Single Judge to the Society was to consider the case of the petitioner under the Bye-laws ignoring the resolutions which have not been approved by the Registrar, Cooperative Societies. The mere fact that the resolutions have been held to be not binding does not entitle the petitioner to be registered as a member of the Society, but he was only entitled to the relief to be considered for membership in accordance with the Bye-laws ignoring the resolutions in question.

The appeal filed by the appellant is allowed to the this extent that the appellant/Society shall consider the case of the petitioner under the Bye-laws as to whether he is entitled to be a member of the Society or not, ignoring the resolutions passed referred to above which were not approved by the Registrar, Cooperative Societies. The order passed by the learned Single Judge imposing costs of the petition upon the appellant/Society is also set aside. The parties are left to bear their own costs throughout.

CMP No.717 of 2007:

In view of the final disposal of the main appeal, this application also stands disposed of. Interim order, if any, shall stand vacated.

(Deepak Gupta),
Judge.

(V.K. Ahuja),
Judge.

December 27, 2007.
(TILAK)